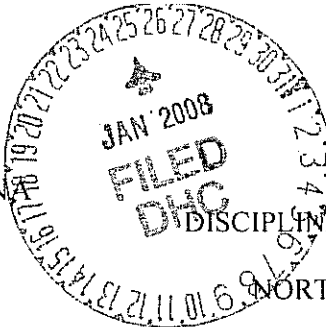


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
08 DHC 2

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PAUL C. POOLEY, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Paul C. Pooley ("Pooley" or "Defendant"), was admitted to the North Carolina State Bar in 1996, and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

Upon information and belief:

3. During the relevant periods referred to herein, Pooley was engaged in the practice of law in the State of North Carolina and maintained a law office in Durham, Durham County, North Carolina.

FIRST CLAIM FOR RELIEF

4. Paragraphs 1 through 3 are re-alleged and fully incorporated as if set forth herein.

5. In the fall of 2005, Pooley filed motions to withdraw from his representation of at least four clients, citing as the basis for his withdrawal Rule

1.16(a)(2) of the Rules of Professional Conduct, which provides that a lawyer “shall withdraw from the representation of a client if . . . the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.”

6. In a March 2006 letter to Superior Court Judge Judson DeRamus, Jr., Pooley stated, “I continue to believe that my emotional condition affects my ability to represent clients.”

7. In a letter to the State Bar dated 9 March 2006, Pooley stated that since 2004 he had been undergoing counseling and treatment, including taking medication, for an anxiety disorder with post-traumatic stress features, depression, and chronic insomnia.

8. From approximately November 2005 through April 2006, Pooley received Letters of Notice from the State Bar regarding grievance file numbers 05G0982, 05G1043, 05G1242, 05G1316, and 06G0361. Pooley did not respond, or did not timely respond, to these Letters of Notice.

9. The State Bar's Grievance Committee determined that Pooley’s alleged misconduct in file numbers 05G0982, 05G1043, 05G1242, 05G1316, 06G0236, and 06G0361 was primarily attributable to Pooley’s mental health problems, and recommended referral of those grievances to the Lawyer Assistance Program (“LAP”).

10. Pooley consented to the Grievance Committee’s recommended referral to LAP and began participating in LAP in or about June 2006. As part of his participation in LAP, Pooley underwent an evaluation and entered into a rehabilitation contract by which he agreed to seek appropriate mental health treatment.

11. After Pooley’s referral to LAP, the State Bar continued to receive grievances against Pooley. Four additional grievances received between February and July 2007 were assigned file numbers 07G0225, 07G0226, 07G0360, and 07G0886.

12. Despite numerous attempts by the State Bar to elicit responses, Pooley did not respond to the Letters of Notice in file numbers 07G0225, 07G0226, 07G0360, and 07G0886.

THEREFORE, the State Bar alleges that Pooley suffers from physical and/or mental conditions that significantly impair his professional judgment, performance, or competency to act as an attorney, that Pooley is disabled within the meaning of 27 N.C.A.C. 1B §.0103(19), and that Pooley should be transferred to disability inactive status pursuant to 27 N.C.A.C. 1B §.0118.

SECOND CLAIM FOR RELIEF

13. Paragraphs 1 through 12 are re-alleged and fully incorporated as if set forth herein.

14. On or about 17 May 2002, Pooley was appointed to represent Harris E. Ford ("Ford") in a criminal appellate matter.

15. After Pooley was appointed to represent Ford, Ford sent numerous letters to Pooley requesting information and documentation, including a copy of his trial transcripts and the appellate briefs filed in his case. In one of these letters, Ford enclosed a \$25.00 check to pay for the cost of copying the requested documents.

16. Pooley did not produce the requested documents or respond to Ford's letters.

17. On 17 February 2004, the North Carolina Court of Appeals issued its opinion in *State of North Carolina v. Harris Emanuel Ford*, affirming Ford's conviction but remanding the case for re-sentencing.

18. The attorney appointed to represent Ford in his re-sentencing hearing made numerous requests of Pooley for a copy of Ford's file and other documentation.

19. Pooley did not respond to these requests from Ford's subsequent counsel.

20. On 26 September 2005, Ford filed a grievance with the State Bar concerning Pooley's failure to communicate with him regarding his appeal. The grievance was assigned file number 05G1043.

21. On or about 29 September 2005, the State Bar sent a Letter of Notice to Pooley regarding file number 05G1043 by certified mail. This Letter of Notice was returned to the State Bar marked "unclaimed."

22. On 12 October 2005, the State Bar sent the Letter of Notice in file number 05G1043 to Pooley by email. Pooley received this Letter of Notice on 12 October 2005.

23. Pooley was required to respond within fifteen days of receipt of the Letter of Notice. He failed to respond within that time period.

24. On or about 10 November 2005, the State Bar sent Pooley a follow-up letter that noted his failure to respond to the Letter of Notice in file number 05G1043. Pooley was required to respond to the follow-up letter by 17 November 2005. He failed to respond by that deadline.

25. In November 2005, the State Bar Councilor for Pooley's district left a telephone message for Pooley regarding his failure to respond to the Letter of Notice. Pooley did not respond to the State Bar Councilor's message.

26. On or about 2 December 2005, the State Bar sent Pooley another follow-up letter that noted his failure to respond to the Letter of Notice in file number 05G1043. Pooley was required to respond to the follow-up letter within 10 days of receipt. He failed to respond within that time period.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Pooley violated the Revised Rules of Professional Conduct in effect at the time of the conduct and violated N.C. Gen. Stat. § 84-28(b)(3) as follows:

- (a) By failing to communicate with Ford about his appeal and by failing to respond to Ford's letters, Pooley failed to keep his client reasonably informed about the status of his legal matter in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (b) By failing to respond to requests by Ford and Ford's subsequent counsel for documents from the client file, Pooley failed to protect a client's interests upon termination of the representation in violation of Rule 1.16(d); and
- (c) By failing to timely respond to the State Bar's Letter of Notice in file number 05G1043, Pooley failed to respond as required to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

THIRD CLAIM FOR RELIEF

27. Paragraphs 1 through 26 are re-alleged and fully incorporated as if set forth herein.

28. On or about 27 August 2001, Pooley was appointed to represent Christopher Jones ("Jones") in a criminal appellate matter.

29. On 20 July 2004, the North Carolina Court of Appeals issued its opinion in *State of North Carolina v. Christopher Nathaniel Jones*, which vacated Jones's conviction based upon a defect in the indictment. On 19 August 2005, the Supreme Court of North Carolina reversed the Court of Appeals' decision and reinstated Jones's conviction.

30. Pooley did not inform Jones of the Supreme Court's decision, nor did Pooley respond to Jones's inquiries about his case following the Supreme Court's decision.

31. On 5 December 2005, Jones filed a grievance with the State Bar concerning Pooley's failure to communicate with Jones about the status of his appeal. The grievance was assigned file number 05G1316.

32. On or about 7 December 2005, the State Bar sent a Letter of Notice to Pooley regarding file number 05G1316 by certified mail. This Letter of Notice was returned to the State Bar marked "unclaimed."

33. On or about 9 January 2006, the Durham County Sheriff's Office personally served Pooley with the Letter of Notice in file number 05G1316.

34. Pooley was required to respond within fifteen days of receipt of the Letter of Notice. He failed to respond within that time period.

35. On or about 9 February 2006, the State Bar sent Pooley a follow-up letter that noted his failure to respond to the Letter of Notice in file number 05G1316. Pooley was required to respond to the follow-up letter by 17 February 2006. He failed to respond by that deadline.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Defendant violated the Revised Rules of Professional Conduct in effect at the time of the conduct and violated N.C. Gen. Stat. § 84-28(b)(3) as follows:

- (a) By failing to respond to Jones's inquiries about the status of his appeal and failing to notify Jones of the Supreme Court's decision in his case, Pooley failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4) and failed to keep his client reasonably informed about the status of his legal matter in violation of Rule 1.4(a)(3); and
- (b) By failing to timely respond to the State Bar's Letter of Notice in file number 05G1316, Pooley failed to respond as required to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

FOURTH CLAIM FOR RELIEF

36. Paragraphs 1 through 35 are re-alleged and incorporated as if fully set forth herein.

37. On or about 5 August 2004, Pooley was appointed to represent Rayshawn Hickson ("Hickson") in a criminal appellate matter.

38. On or about 18 March 2005, Pooley was appointed to represent Kewaun Lineberger (“Lineberger”) in a criminal appellate matter.

39. Pooley did not file the record on appeal for either Hickson or Lineberger.

40. As a result of Pooley’s failure to file the record on appeal, Lineberger’s appeal was dismissed.

41. On 13 and 18 October 2005, Pooley filed motions in Forsyth County Superior Court to withdraw from his representation of Hickson and Lineberger, respectively.

42. A hearing on Pooley’s motion to withdraw from representing Hickson was calendared for November 2005.

43. Pooley did not appear at the hearing on his motion to withdraw from representing Hickson.

44. A hearing on Pooley’s motion to withdraw from representing Lineberger was calendared for 6 March 2006.

45. Pooley did not appear at the hearing on his motion to withdraw from representing Lineberger.

THEREFORE, Plaintiff alleges that Defendant’s foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Pooley violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By failing to perfect the appeals of Hickson and Lineberger, Pooley failed to act with reasonable diligence and promptness in representing his clients in violation of Rule 1.3 and; and
- (b) By failing to appear at the hearings on his motions to withdraw, Pooley failed to comply with applicable law requiring permission of a tribunal when terminating a representation in violation of Rule 1.16(c) and knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c).

FIFTH CLAIM FOR RELIEF

46. Paragraphs 1 through 45 are re-alleged and incorporated as if fully set forth herein.

47. On or about 30 June 1999, Pooley was appointed to represent Thomas Covington Jr. ("Covington") in a criminal appellate matter.

48. On or about 17 July 2001, the North Carolina Court of Appeals issued its decision in *State of North Carolina v. Thomas Covington, Jr.* finding no error in Covington's trial. On or about 4 October 2001, the Supreme Court of North Carolina denied discretionary review of Covington's case.

49. Covington subsequently filed a Motion for Appropriate Relief *pro se* and was granted an evidentiary hearing on the issue of ineffective assistance of counsel by Covington's trial attorney.

50. In letters to Pooley dated 16 February 2004, 5 March 2004, 3 May 2004, and 7 July 2004, the attorney appointed to represent Covington at the evidentiary hearing on ineffective assistance of counsel requested a copy of Covington's client file and trial transcripts.

51. Pooley did not respond to these letters from Covington's subsequent counsel and did not provide a copy of Covington's file and trial transcripts as requested.

52. On or about 8 September 2004, Covington's subsequent counsel filed a motion in Columbus County Superior Court to compel production of the trial transcripts from Pooley. On or about 15 September 2004, Superior Court Judge William Gore granted the motion and ordered Pooley to deliver the transcripts by 1 November 2004.

53. Pooley did not deliver the transcripts by 1 November 2004, as required by the Court's order compelling production.

54. On or about 15 December 2004, Covington's subsequent counsel filed a motion for an order directing Pooley to appear and show cause why he should not be held in contempt for failing to comply with the Court's previous order compelling production of the trial transcripts ("show cause order").

55. On or about 23 December 2004, Judge Gore issued a show cause order requiring Pooley to appear before the Court on 28 February 2005.

56. Pooley did not appear on 28 February 2005 as required by the Court's show cause order.

57. On 28 March 2006, the State Bar opened a grievance file against Pooley concerning his actions in Covington's case. This grievance was assigned file number 06G0361.

58. On or about 7 April 2006, the State Bar sent a Letter of Notice to Pooley regarding file number 06G0361. Pooley received this Letter of Notice by certified mail on 12 April 2006.

59. Pooley was required to respond within fifteen days of receipt of the Letter of Notice. He failed to respond.

60. On or about 5 May 2006, the State Bar sent Pooley a follow-up letter that noted his failure to respond to the Letter of Notice in file number 06G0361. Pooley was required to respond to the follow-up letter by 15 May 2006. He failed to respond by that deadline.

61. In May 2006, the State Bar Councilor for Pooley's district left a telephone message for Pooley regarding his failure to respond to the Letter of Notice. Pooley did not respond to the State Bar Councilor's message.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Defendant violated the Revised Rules of Professional Conduct in effect at the time of the conduct and violated N.C. Gen. Stat. § 84-28(b)(3) as follows:

- (a) By failing to respond to requests by Covington's subsequent counsel for Covington's client file and trial transcripts, Pooley failed to protect his client's interests upon termination of the representation in violation of Rule 1.16(d);
- (b) By failing to produce Covington's trial transcripts as ordered by the Court and by failing to appear in response to the Court's show cause order, Pooley knowingly disobeyed obligations under the rules of a tribunal in violation of Rule 3.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (c) By failing to respond to the State Bar's Letter of Notice in file number 06G0361, Pooley failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

SIXTH CLAIM FOR RELIEF

62. Paragraphs 1 through 61 are re-alleged and incorporated as if fully set forth herein.

63. On or about 7 September 2004, Pooley was appointed to represent Aaron M. Davis ("Davis") in a criminal appellate matter.

64. Throughout the representation, Davis sent letters to Pooley requesting information and documentation, including the status of his appeal, the record on appeal and the appellate briefs filed in his case.

65. Pooley did not respond to Davis's letters.

66. On 12 September 2005, Davis filed a grievance with the State Bar concerning Pooley's failure to communicate with Davis about his appeal. The grievance was assigned file number 05G0982.

67. On or about 20 September 2005, the State Bar sent a Letter of Notice to Pooley regarding file number 05G0982 by certified mail. This Letter of Notice was returned to the State Bar marked "unclaimed."

68. On or about 4 October 2005, the North Carolina Court of Appeals filed its opinion in *State of North Carolina v. Aaron Mitchell Davis*, finding no error in Davis's trial.

69. Pooley did not notify Davis of the Court of Appeals' decision.

70. On 12 October 2005, the State Bar sent the Letter of Notice in file number 05G0982 to Pooley by email. Pooley received this Letter of Notice on 12 October 2005.

71. Pooley was required to respond within fifteen days of receipt of the Letter of Notice. He failed to respond within that time period.

72. On or about 10 November 2005, the State Bar sent Pooley a follow-up letter that noted his failure to respond to the Letter of Notice in file number 05G0982. Pooley was required to respond to the follow-up letter by 17 November 2005. He failed to respond by that deadline.

73. In November 2005, the State Bar Councilor for Pooley's district left a telephone message for Pooley regarding his failure to respond to the Letter of Notice. Pooley did not respond to the State Bar Councilor's message.

74. On or about 2 December 2005, the State Bar sent Pooley another follow-up letter that noted his failure to respond to the Letter of Notice in file number 05G0982. Pooley was required to respond to the follow-up letter within 10 days of receipt. He failed to respond within that time period.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Pooley violated the Revised Rules of Professional Conduct in effect at the time of the conduct and violated N.C. Gen. Stat. § 84-28(b)(3) as follows:

- (a) By failing to respond to Davis's requests for information and documentation and by failing to notify Davis of the Court of Appeals' decision in his case, Pooley failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4) and failed to keep his client reasonably informed about the status of his legal matter in violation of Rule 1.4(a)(3); and
- (b) By failing to timely respond to the State Bar's Letter of Notice in file number 05G0982, Pooley failed to respond as required to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

SEVENTH CLAIM FOR RELIEF

75. Paragraphs 1 through 74 are re-alleged and fully incorporated as if set forth herein.

76. In or about October 2003, Pooley was appointed to represent James D. Walker ("Walker") in a criminal appellate matter.

77. Throughout the course of representation, Pooley did not respond to Walker's requests for information about his appeal.

78. In April 2004 and again in October 2004, Walker sent letters to the State Bar's Client Assistance Program ("CAP") and to the Office of the Appellate Defender to request assistance in communicating with Pooley.

79. In April 2004 and again in October 2004, CAP and the Office of the Appellate Defender forwarded Walker's correspondence to Pooley and requested that Pooley contact Walker.

80. On or about 7 June 2005, the North Carolina Court of Appeals issued its decision in *State of North Carolina v. James Daryl Walker*, finding no error in Walker's trial. On or about 18 August 2005, the Supreme Court of North Carolina denied discretionary review of Walker's case.

81. Pooley did not notify Walker of the appellate courts' decisions in his case.

82. On 17 November 2005, Walker filed a grievance with the State Bar concerning Pooley's failure to communicate with Walker about his appeal. The grievance was assigned file number 05G1242.

83. On or about 28 December 2005, the State Bar sent a Letter of Notice to Pooley regarding file number 05G1242 by certified mail. This Letter of Notice was returned to the State Bar marked "unclaimed."

84. On or about 9 January 2006, the Durham County Sheriff's Office personally served Pooley with the Letter of Notice in file number 05G1242.

85. Pooley was required to respond within fifteen days of receipt of the Letter of Notice. He failed to respond within that time period.

86. On or about 9 February 2006, the State Bar sent Pooley a follow-up letter that noted his failure to respond to the Letter of Notice in file number 05G1242. Pooley was required to respond to the follow-up letter by 17 February 2006. He failed to respond by that deadline.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Pooley violated the Revised Rules of Professional Conduct in effect at the time of the conduct and violated N.C. Gen. Stat. § 84-28(b)(3) as follows:

- (a) By failing to respond to Walker's requests for information about his appeal and by failing to notify Walker of the appellate courts' decisions in his case, Pooley failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4) and failed to keep his client reasonably informed about the status of his legal matter in violation of Rule 1.4(a)(3); and
- (b) By failing to timely respond to the State Bar's Letter of Notice in file number 05G1242, Pooley failed to respond as required to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

EIGHTH CLAIM FOR RELIEF

87. Paragraphs 1 through 86 are re-alleged and fully incorporated as if set forth herein.

88. On or about 4 February 2003, Pooley was appointed to represent Robert L. Jordan ("Jordan") in a criminal appellate matter.

89. After Pooley was appointed to represent him, Jordan wrote letters to and called Pooley on numerous occasions.

90. Pooley initially responded to Jordan's communications, but subsequently stopped communicating with Jordan.

91. From the time he was appointed to represent Jordan through 17 April 2007, when he withdrew from the representation, Pooley took no action on Jordan's behalf.

92. Concerned about the status of his appeal, Jordan contacted the State Bar's Client Assistance Program ("CAP") in January 2007 and requested assistance in communicating with Pooley.

93. In January and February 2007, a CAP representative left a voicemail message and sent two letters to Pooley regarding his lack of communication with Jordan. Pooley did not respond to the voicemail or the letters from CAP.

94. On 27 February 2007, Jordan filed a grievance with the State Bar concerning Pooley's failure to pursue Jordan's appeal and failure to communicate with Jordan. The grievance was assigned file number 07G0225.

95. On or about 29 March 2007, the State Bar sent a Letter of Notice to Pooley regarding file number 07G0225 by certified mail. This Letter of Notice was returned to the State Bar marked "unclaimed."

96. On or about 8 May 2007, the Durham County Sheriff's Office attempted to serve Pooley with the Letter of Notice in file number 07G0225, but was unable to serve Pooley because the office at the address on file with the State Bar was vacant.

97. On or about 11 May 2007, the State Bar sent the Letter of Notice in file number 07G0225 to Pooley's residential address in Durham. Pooley received this Letter of Notice by certified mail on 16 May 2007.

98. Pooley was required to respond within fifteen days of receipt of the Letter of Notice. He failed to respond.

99. On or about 6 June 2007, the State Bar sent Pooley a follow-up letter that noted his failure to respond to the Letter of Notice in file number 07G0225. Pooley was required to respond to the follow-up letter by 18 June 2007. He failed to respond.

100. On or about 28 June 2007, State Bar Deputy Counsel spoke with Pooley by telephone regarding his failure to respond to the Letter of Notice in file number 07G0225. Pooley was granted an extension until 22 August 2007 to provide a written response to the Letter of Notice.

101. Pooley did not submit a written response to the Letter of Notice in file number 07G0225.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Pooley

violated the Revised Rules of Professional Conduct in effect at the time of the conduct and violated N.C. Gen. Stat. § 84-28(b)(3) as follows:

- (a) By failing to take any action on Jordan's behalf for more than four years, Pooley failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3;
- (b) By failing to respond to Jordan's requests for information, Pooley failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4) and failed to keep his client reasonably informed about the status of his legal matter in violation of Rule 1.4(a)(3); and
- (c) By failing to respond to the State Bar's Letter of Notice in file number 07G0225, Pooley failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

NINTH CLAIM FOR RELIEF

102. Paragraphs 1 through 101 are re-alleged and fully incorporated as if set forth herein.

103. On or about 17 July 2006, Pooley was appointed to represent Vincent Bonds ("Bonds") in a criminal appellate matter.

104. Bonds attempted to contact Pooley by letters dated 24 August 2006 and 11 December 2006.

105. Pooley did not respond to Bonds's letters.

106. On or about 3 January 2007, the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit") sent Pooley a "Notice of Rules Violation" which noted his failure to file the transcript purchase order form in Bonds's case as previously directed by the Court. The letter required Pooley to file the transcript purchase order form by 18 January 2007.

107. Pooley did not file the transcript purchase order form by 18 January 2007 or thereafter.

108. In or about January 2007, Bonds sent a letter to the Fourth Circuit regarding Pooley's failure to communicate with Bonds about his appeal. In the letter, Bonds asked the Fourth Circuit to remove Pooley as his attorney.

109. The Fourth Circuit construed Bonds's letter as a motion to relieve Pooley from further representation.

110. By letter dated 1 February 2007, the Fourth Circuit notified Pooley of Bonds's motion regarding his representation. This letter provided "[c]ounsel must file four copies of a response to the motion in the clerk's office on or before 2/12/07, even if there is no objection."

111. Pooley did not submit a response to Bonds's motion by 12 February 2007 or thereafter.

112. On or about 25 April 2007, the Fourth Circuit sent Pooley a "Notice of Rules Violation" which noted his failure to file a brief and appendix in Bonds's case as previously directed by the Court. The Notice required Pooley to file the brief and appendix by 9 May 2007.

113. Pooley did not file the brief and appendix by 9 May 2007.

114. By letter to Pooley dated 13 June 2007, the Fourth Circuit again noted Pooley's failure to file a brief and appendix in Bonds's case and reminded Pooley of the 25 April 2007 Notice of Rules Violation. The letter required Pooley to file the brief and appendix by 26 June 2007.

115. Pooley did not file the brief and appendix by 26 June 2007.

116. On or about 18 July 2007, the Fourth Circuit sent Pooley a second "Notice of Rules Violation" which noted his failure to file a brief and appendix in Bonds's case as previously directed by the Court. The Notice required Pooley to file the brief and appendix by 2 August 2007.

117. Pooley did not file the brief and appendix by 2 August 2007 or thereafter.

118. In an Order filed 9 October 2007, the Fourth Circuit relieved Pooley as counsel and appointed new appellate counsel for Bonds.

119. On 27 February 2007, Bonds filed a grievance with the State Bar concerning Pooley's failure to communicate with Bonds about his appeal. The grievance was assigned file number 07G0226.

120. On or about 29 March 2007, the State Bar sent a Letter of Notice to Pooley regarding file number 07G0226 by certified mail. This Letter of Notice was returned to the State Bar marked "unclaimed."

121. On or about 8 May 2007, the Durham County Sheriff's Office attempted to serve Pooley with the Letter of Notice in file number 07G0226, but was unable to serve Pooley because the office at the address on file with the State Bar was vacant.

122. On or about 11 May 2007, the State Bar sent the Letter of Notice in file number 07G0226 to Pooley's residential address in Durham. Pooley received this Letter of Notice by certified mail on 16 May 2007.

123. Pooley was required to respond within fifteen days of receipt of the Letter of Notice. He failed to respond.

124. On or about 6 June 2007, the State Bar sent Pooley a follow-up letter that noted his failure to respond to the Letter of Notice in file number 07G0226. Pooley was required to respond to the follow-up letter by 18 June 2007. He failed to respond by that deadline.

125. On or about 28 June 2007, State Bar Deputy Counsel spoke with Pooley by telephone regarding his failure to respond to the Letter of Notice in file number 07G0226. Pooley was granted an extension until 22 August 2007 to provide a written response to the Letter of Notice.

126. Pooley did not submit a written response to the Letter of Notice in file number 07G0226.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Pooley violated the Revised Rules of Professional Conduct in effect at the time of the conduct and violated N.C. Gen. Stat. § 84-28(b)(3) as follows:

- (a) By failing to file necessary documents, including a brief, on behalf of Bonds for more than a year after he was appointed, Pooley failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3;
- (b) By failing to respond to Bonds's requests for information or communicate with Bonds about his appeal, Pooley failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4) and failed to keep his client reasonably informed about the status of his legal matter in violation of Rule 1.4(a)(3);
- (c) By failing to file documents as directed by the Court, failing to respond to the Court's Notices of Rules Violation, and failing to respond to Bonds's motion to relieve Pooley from further representation, Pooley knowingly disobeyed obligations under the rules of a tribunal in violation of Rule 3.4(c); and
- (d) By failing to respond to the State Bar's Letter of Notice in file number 07G0226, Pooley failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

TENTH CLAIM FOR RELIEF

127. Paragraphs 1 through 126 are re-alleged and fully incorporated as if set forth herein.

128. On or about 28 March 2001, Pooley was appointed to represent Nathaniel M. Upshur ("Upshur") in a criminal appellate matter.

129. After initially pursuing a motion for a new trial on behalf of Upshur, Pooley filed the record on appeal in Upshur's case with the North Carolina Court of Appeals in March 2004.

130. While Upshur's case was on appeal, Upshur wrote several letters to Pooley in an effort to obtain information about the status of his appeal.

131. Pooley did not respond to Upshur's letters.

132. Upshur did not receive any communication from Pooley after 2004.

133. On or about 21 February 2006, the Court of Appeals issued its opinion in *State of North Carolina v. Nathaniel Mark Upshur*, affirming Upshur's convictions but remanding for re-sentencing on one of the charges. On or about 16 November 2006, the Supreme Court of North Carolina dismissed Upshur's appeal and denied Upshur's petition for discretionary review.

134. Pooley did not inform Upshur of the appellate courts' decisions.

135. Upshur eventually learned that the appellate courts had rendered decisions in his case, and requested copies of the opinions from Pooley.

136. Pooley did not respond to Upshur's request for a copy of the appellate courts' decisions in his case.

137. In November 2006 and again in February 2007, Upshur contacted the State Bar's Client Assistance Program ("CAP") to request assistance in communicating with Pooley.

138. In response to each of Upshur's requests for assistance, a CAP representative sent Pooley a letter regarding his failure to communicate with Upshur.

139. Pooley responded to the November 2006 letter from CAP, but did not respond to the February 2007 letter from CAP.

140. On or about 2 April 2007, Upshur filed a grievance with the State Bar concerning Pooley's failure to communicate with Upshur about his appeal. The grievance was assigned file number 07G0360.

141. On or about 7 May 2007, the State Bar sent a Letter of Notice to Pooley regarding file number 07G0360. Pooley received this Letter of Notice by certified mail on 16 May 2007.

142. Pooley was required to respond within fifteen days of receipt of the Letter of Notice. He failed to respond.

143. On or about 6 June 2007, the State Bar sent Pooley a follow-up letter that noted his failure to respond to the Letter of Notice in file number 07G0360. Pooley was required to respond to the follow-up letter by 18 June 2007. He failed to respond by that deadline.

144. On or about 28 June 2007, State Bar Deputy Counsel spoke with Pooley by telephone regarding his failure to respond to the Letter of Notice in file number 07G0360. Pooley was granted an extension until 22 August 2007 to provide a written response to the Letter of Notice.

145. Pooley did not submit a written response to the Letter of Notice in file number 07G0360.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Pooley violated the Revised Rules of Professional Conduct in effect at the time of the conduct and violated N.C. Gen. Stat. § 84-28(b)(3) as follows:

- (a) By failing to respond to Upshur's requests for information and by failing to notify Upshur of the appellate courts' decisions in his case, Pooley failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4) and failed to keep his client reasonably informed about the status of his legal matter in violation of Rule 1.4(a)(3); and
- (b) By failing to respond to the State Bar's Letter of Notice in file number 07G0360, Pooley failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

ELEVENTH CLAIM FOR RELIEF

146. Paragraphs 1 through 145 are re-alleged and fully incorporated as if set forth herein.

147. Pooley served as appointed counsel for Ricky D. Andrews ("Andrews") in a criminal appellate matter.

148. On or about 23 July 2007, Andrews filed a grievance with the State Bar alleging that Pooley lacked diligence, failed to communicate, and failed to provide Andrews with his trial transcript upon request. The grievance was assigned file number 07G0886.

149. On or about 14 September 2007, the State Bar sent a Letter of Notice to Pooley regarding file number 07G0886 by certified mail. This Letter of Notice was returned to the State Bar marked "unclaimed."

150. Pooley was personally served with the Letter of Notice in file number 07G0886 on 14 November 2007.

151. Pooley was required to respond within fifteen days of receipt of the Letter of Notice. He failed to respond.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that, by failing to respond to the State Bar's Letter of Notice in file number 07G0886, Pooley failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

WHEREFORE, Plaintiff prays for an order:


- (1) Requiring Defendant to submit to an examination and evaluation by medical personnel designated by the Hearing Committee pursuant to 27 N.C.A.C. 1B §.0118(b)(3) and North Carolina Rules of Civil Procedure 35(a); and/or
- (2) Transferring Defendant to disability inactive status in accordance with N.C.G.S. §84-28(g) and 27 N.C.A.C. 1B §.0118(b)(6).

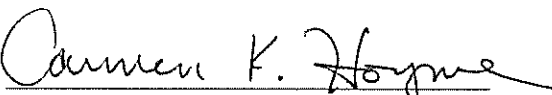
In the alternative, if the Hearing Committee does not find that Defendant is disabled within the meaning of 27 N.C.A.C. 1B §.0103(19) and does not transfer him to disability inactive status pursuant to 27 N.C.A.C. 1B §.0118 as set forth in the First Claim for Relief, or in the event Defendant is transferred to disability inactive status and subsequently returns to active status, Plaintiff prays that:

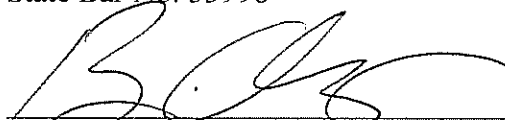
- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
- (2) Defendant be taxed with the costs permitted by law in connection with this proceeding; and

(3) For such other and further relief as is appropriate.

This the 25th day of January, 2008.


James R. Fox, Chair
Grievance Committee


Carmen K. Hoyme, Deputy Counsel
State Bar No. 33998


Brian P.D. Oten, Deputy Counsel
State Bar No. 34140

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